

EXHIBIT A



VIA Email

June 8, 2018

Office of the General Counsel
Attn: FOIA Service Center
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041
EOIR.FOIARequests@usdoj.gov

RE: Freedom of Information Act Request

Dear Sir or Madam:

On behalf of New York Legal Assistance Group (NYLAG) and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(2), I request that the Board of Immigration Appeals (BIA) make publicly available in its online electronic reading room:

All nonpublished decisions of the BIA (including concurring and dissenting opinions) from November 1, 1996, through the present.

I also request that BIA make all future nonpublished decisions (including concurring and dissenting opinions) publicly available in its online electronic reading room.

All BIA opinions—whether published or nonpublished—are “final opinions [or] orders, made in the adjudication of cases.” 5 U.S.C. § 552(a)(2)(A). Accordingly, the BIA must make these nonpublished decisions publicly available in its electronic reading room.

Because FOIA requires the BIA to make these records publicly available in its online electronic reading room, no fees can be charged for processing this request. In the alternative, NYLAG requests that all fees in connection with this request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because NYLAG does not seek the records for a commercial purpose and disclosure “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” The records requested will contribute to the public’s understanding of the BIA’s decision-making in the vast majority of the cases it adjudicates.¹ As the Second Circuit has explained, one of Congress’s goals in enacting FOIA—and in particular enacting § 552(a)(2)—was to prevent the development of “secret agency law.” *Brennan Center for Justice at N.Y. Univ. Sch. of Law v. DOJ*, 697 F.3d 184, 196

¹ Compare U.S. Department of Justice, Executive Office for Immigration Review, FY 2015 Statistics Yearbook Q2, <https://www.justice.gov/eoir/page/file/fysb15/download> (indicating the BIA resolved 34,244 cases in Fiscal Year 2015) with U.S. Department of Justice, Executive Office for Immigration Review, AG/BIA Precedent Decisions Vol. 26, <https://www.justice.gov/eoir/precedent-decisions-volume-26> (indicating that 32 BIA decisions were published in Fiscal Year 2015).

(2d Cir. 2012) (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 153 (1975)). Because “the public is vitally concerned” with the reasons underlying an agency adjudication, withholding the analysis underlying the agency’s adjudication “is offensive to FOIA.” *Nat’l Council of La Raza v. DOJ*, 411 F.3d 350, 360 (2d Cir. 2005) (internal quotation marks omitted).

NYLAG is a nonprofit organization that provides free legal services to low-income New Yorkers in the areas of immigration, government benefits, family law, disability rights, housing law, special education, and consumer debt, among others. In particular, NYLAG is one of the largest immigrant services providers in New York City. Its Immigrant Protection Unit provides low-income immigrants with comprehensive legal services, including direct representation in removal proceedings; assistance with adjustment of status, family-based immigrant petitions, and humanitarian parole; and immigrant community education.

NYLAG does not have a commercial interest in the requested records; it intends that the agency provide the information to members of the public free of charge. As a result, NYLAG could not commercially benefit from a favorable response to this request.

Accordingly, although the BIA should not charge any fees for the processing of this request under § 552(a)(2), I request in the alternative that NYLAG be granted a fee waiver and not be charged any fees associated with processing this request.

I expect a response within 20 working days as provided by law. If you have any questions regarding this request, please contact me by phone at 212-613-6551 or by email at dtarantolo@nylag.org.

Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Danielle Tarantolo", written over a horizontal line.

Danielle Tarantolo
Jane Greengold Stevens